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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 26, 2013

4:04 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Fairness Hearing RE: Kessler Settlement Class.

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ALSO PRESENT:

STEVEN TILGHMAN, Tilghman & Company (TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. All right,
3 we're here in Residential Capital, number 12-12020. This is in
4 connection with the Kessler settlement fairness hearing.

5 Mr. Rosenbaum?

6 MR. ROSENBAUM: Good afternoon, Your Honor. Norm
7 Rosenbaum, Morrison & Foerster for the debtors. Your Honor,
8 first, I think, on behalf of everyone involved in these cases,
9 we'd like to thank Your Honor for accommodating us this
10 afternoon. I know it's been a very long week, month, year. So
11 we do appreciate it.

12 Your Honor, as you stated, this is the final hearing
13 on the Kessler settlement motion. It's page 12 of the agenda,
14 (II) item (1). It's docket number 4451, is the joint motion.

15 Your Honor, this is the joint motion of the debtors
16 and class counsel for final approval of the Kessler settlement
17 agreement. With me today is Jordan Wishnew of Morrison &
18 Foerster, Michael Biggers of Bryan Cave, John Walsh and Maryann
19 Gallagher, from Curtis Mallet. I know there's several other
20 counsel. I don't know if you want to take the appearances, or
21 I could --

22 THE COURT: Yeah, let me get the rest of the
23 appearances now.

24 MR. WALTERS: Fred Walters and Bruce Carlson and David
25 Skeens and Dan Flanigan, for the Kessler class.

1 THE COURT: Okay.

2 MR. WALTERS: On the phone with us, Your Honor, if you
3 want those appearances, also?

4 THE COURT: Sure, I'll take whatever appearances on
5 the phone.

6 MR. WALTERS: And Dan Myers, John Sharbrough, Scott
7 Borison, and Bobby Wood.

8 THE COURT: Okay.

9 MR. WALTERS: Also additional plaintiffs' counsel for
10 the Kessler class.

11 THE COURT: All right. And for PNC?

12 MR. WALTERS: Oh, I'm sorry. I forgot. Mr. Andrew
13 Hutton, one more additional plaintiff counsel on the phone.

14 THE COURT: Okay, all right.

15 MR. WALTERS: Thank you, Your Honor.

16 MR. MARRIOTT: Good afternoon, Your Honor. Vince
17 Marriott, Ballard Spahr, on behalf of PNC Bank.

18 THE COURT: Just tell me your last name again, I'm
19 sorry.

20 MR. MARRIOTT: I'm sorry, Marriott.

21 THE COURT: Okay.

22 MR. MARRIOTT: M-A-R-R-I-O-T-T.

23 THE COURT: Yeah, Like the hotel.

24 MR. MARRIOTT: Just like the hotel. They're not mine.

25 THE COURT: It's too bad.

1 MR. MARRIOTT: Or I wouldn't be standing at this
2 podium. With me is my colleague Joel Tasca also from Ballard
3 Spahr. I don't anticipate that he will need to speak today.
4 He has not been admitted pro hac --

5 THE COURT: I'll hear him if he needs to speak. It's
6 okay.

7 MR. MARRIOTT: Thank you.

8 THE COURT: All right. Thank you.

9 MR. ROSENBAUM: Your Honor, as you may recall, Your
10 Honor approved the motion on a preliminary basis. That was
11 docket number 4808. In support of the motion, we have
12 submitted the declarations of William Thompson, he's the
13 general counsel of ResCap; Frederick Walters and David Skeens
14 of Walters Bender; Ron Freidman, of SilvermanAcampora. Mr.
15 Walters has also submitted an additional declaration in support
16 of his free request, which he will address as part of this
17 hearing.

18 THE COURT: Okay.

19 MR. ROSENBAUM: Your Honor, we've only received two
20 objections to the motion: one from PNC Bank, which is a
21 limited objection, of which Your Honor's aware. And we
22 received one objection from a class member. That's Mr. and
23 Mrs. Sinclair. They had notified us both in the objection that
24 they were not going to appear today. That was a requirement of
25 the preliminary order, that they appear live.

1 THE COURT: What was -- remind what the nature of
2 their objection was?

3 MR. ROSENBAUM: They object to the settlement
4 basically on 723 grounds and the fee request.

5 THE COURT: Okay, thank you.

6 MR. ROSENBAUM: And Mr. Walters will address that.

7 THE COURT: Okay.

8 MR. ROSENBAUM: Your Honor, we believe that we have
9 satisfied the standards under Bankruptcy Rule 7023 and 9019,
10 including the factors outlined in the Iridium case and the BGI
11 case and the other cases we've cited in the brief. As I
12 stated, we've noticed or the class noticed over 45,000 class
13 members. We received only a handful of opt-outs and one
14 objection, which was not from an opt-out party.

15 We do have the objection of PNC. If Your Honor would
16 like, I'm happy to give some overview of the 9019 factors. Mr.
17 Walters will address the --

18 THE COURT: No, I don't think you need --

19 MR. ROSENBAUM: -- 723 --

20 THE COURT: -- you don't need to do that. But I do
21 want -- I obviously want -- maybe the best thing to do is let
22 me hear from PNC's counsel and then I'll give you or one of
23 your colleagues an opportunity -- or other of your colleagues
24 to respond.

25 MR. ROSENBAUM: Mr. Walsh will be addressing the PNC

1 objection, Your Honor.

2 THE COURT: Okay, thank you.

3 MR. MARRIOTT: Good afternoon, Your Honor. Vince
4 Marriott, Ballard Spahr, on behalf of PNC.

5 Counsel is correct that our objection is a limited
6 objection. We did not interpose an objection to the settlement
7 insofar as it would be fair to the estate. That's up to the
8 creditors. We didn't object to it insofar as its fairness to
9 the plaintiffs. That's up to them.

10 We did, however, take the position, and do take the
11 position, that in addition to being fair to the estate and fair
12 to the plaintiffs, it has to be fair to the nonsettling
13 defendants of which that's principally PNC.

14 As you know, the form of order approving the
15 settlement and how it deals with the potential contribution and
16 indemnity claims of PNC and judgment --

17 THE COURT: The issue is judgment reduction.

18 MR. MARRIOTT: -- and judgment reduction has had sort
19 of a tortured history, where it began with left to applicable
20 law, became pro-tanto, and now is absent altogether.

21 And the debtor has taken the position, as have the
22 plaintiffs in their responsive pleadings, that stripping the
23 order of any mention of judgment reduction or barring
24 contribution and indemnity claims deprives us of standing to be
25 here today to object to the settlement on fairness grounds as

1 to us, because the settlement is now silent on those issues.

2 I -- and we mentioned this in the papers, Judge. I
3 find that position disingenuous.

4 THE COURT: May I ask you this, Mr. Marriott?

5 MR. MARRIOTT: Yes.

6 THE COURT: When this issue came up for -- when the
7 settlement came up for preliminary class action approval, and I
8 raised the issue about judgment reduction, counsel went off,
9 scurried around, came back and told me how they were changing
10 it to deal with judgment reduction. One of your colleagues
11 argued and expressed the view that wasn't satisfactory, that
12 wasn't the appropriate rule for judgment reduction.

13 And we had some discussion about whether it was a
14 matter for me to decide or whether it was a matter for the
15 judge in Pittsburgh -- and I apologize, I can't remember the
16 judge's name now. I told everybody I wanted to speak to the
17 judge, and I did.

18 MR. MARRIOTT: Yes.

19 THE COURT: And I'm certainly aware that they stripped
20 out the provisions in the order. And whether it makes them
21 happy or not, my view would be -- and I'm not ruling yet -- but
22 my view is, if I approve the settlement, I'm going to make a
23 statement on the record that the issue of judgment reduction is
24 reserved for the district court in which the action is pending.

25 And what's your view about that?

1 MR. MARRIOTT: Let me address that. And let me start,
2 I guess, with first principles which we cite in our brief, and
3 principally rely on Masters Mates for the proposition that when
4 the rights of a third party are at stake -- or put at stake by
5 a settlement, that it's not enough that it be fair to --

6 THE COURT: I don't question that PNC --

7 MR. MARRIOTT: Here's --

8 THE COURT: To get my -- to get approval, not only
9 by -- this requires my approval and it requires approval of the
10 district court. I mean, if -- depending on what happens in
11 the -- in the district court. If you prevail, this becomes a
12 moot issue.

13 MR. MARRIOTT: It becomes moot. Well --

14 THE COURT: Right.

15 MR. MARRIOTT: -- here's my concern. What I think
16 the -- the risk here is this, that PNC -- the process becomes
17 bifurcated to the detriment of PNC, which is to say that --
18 what the debtor is basically asking at this point -- because I
19 think the debtor, in their papers, indicated they were fine
20 with the --

21 THE COURT: Well, you know, the last time they said
22 they were agnostic on it. It was --

23 MR. MARRIOTT: Well --

24 THE COURT: -- really the plaintiffs' lawyers who --

25 MR. MARRIOTT: Right. But the risk is it's a three-

1 part inquiry as to which -- the debtors are asking you to
2 make -- handle two parts of it and asking that the third part
3 be pushed to the middle district.

4 THE COURT: See, I could make you very unhappy -- this
5 is not a threat. Trust me. But I could make PNC very unhappy
6 and insist that the language that they put in and then took out
7 be put back in, and that I determine, as a matter of law, that
8 that's the appropriate standard for judgment reduction. Then,
9 what the district judge does with that, I don't know. I mean,
10 your colleague had expressed concern that, well, if I make that
11 decision, is the district court either going to feel bound by
12 it or, even if not bound by it, conclude that what the stan --
13 what the appropriate measure of judgment reduction is, is a
14 matter of discretion, the bankruptcy court made that decision,
15 and therefore I'm not going to reach a contrary rule.

16 So when I say that would make you unhappy, yes, the
17 district court might conclude otherwise that a different rule
18 ought to apply.

19 MR. MARRIOTT: Well --

20 THE COURT: And it'll do that. But it seems to me,
21 what I said at preliminary -- the stage of preliminary
22 approval, I continue to believe, that -- and I think I pressed
23 your colleague about this -- point me to a case in the Third
24 Circuit that said that the rule of judgment reduction that you
25 are advocating was the standard that had to be applied. It

1 didn't -- couldn't provide me with a case that said that.

2 And I'm -- you know, I don't get this issue too often
3 now. When I was in practice when I did class action, I was
4 very, very much on top of what the standards for judgment
5 reduction were. But it seemed to me that there is no clear
6 answer here. And to the extent -- so the parties had reached
7 an agreement that -- when I pressed them, they put language in
8 that made you very unhappy. And now they've taken that
9 language out; they've left it silent. So I said then I
10 wasn't -- I really wasn't inclined to tie the hands of the
11 district court that is either going to handle a settlement or
12 try the case if it gets to the -- or summary -- you know, if
13 the case goes to trial. Let's put it that way. If you prevail
14 or if you prevail at trial, this is all a moot issue.

15 MR. MARRIOTT: Right.

16 THE COURT: But if you don't prevail at tri -- if your
17 client doesn't prevail at trial and the issue becomes a very
18 live issue as to what judgment reduction, if at all, you're
19 entitled to, I think you're entitled to judgment reduction.
20 The question what's the standard. You weren't happy with the
21 agreement -- with the language they put in, which settled on a
22 rule that was disadvantageous to PNC. They've taken that back
23 out.

24 I'm more than happy -- they may not be, but I'm more
25 than happy to put a sentence in the order that specifically

1 states this Court's view that it'll be for the district
2 court -- this isn't a quote in the language, but, you know,
3 it'll be for the district court to determine in the event of an
4 adverse judgment against PNC what the measure of judgment
5 reduction should be. I think the issue belongs with the
6 district court who's going to try the case if the case goes to
7 trial. And if it's adverse to PNC, you'll get the issue
8 decided.

9 But it seems to me that -- that's why I have a problem
10 with your position. You weren't happy when they put the
11 language in, because you didn't like the rule. I'm not going
12 to put in the language you like. Let me just tell you that
13 right now. I don't believe I'm required to put that language
14 in any order. I can approve the settlement with language that
15 is -- that they agree upon, the formula for judgment reduction.
16 I think I can do that. And I think I can do that and still
17 say, Judge, you're really the one -- this is what I think now.
18 They've reached this agreement. I approve that as fair and
19 reasonable because the law does not require a different rule.
20 It does not clearly require a different rule. But my
21 preference is to leave it to him. So careful what you argue
22 yourself into.

23 MR. MARRIOTT: Well, let me say this. I would
24 certainly rather you defer it than decide against me.

25 THE COURT: Yeah, I bet.

1 MR. MARRIOTT: And --

2 THE COURT: I remember that feeling.

3 MR. MARRIOTT: With or without hotels.

4 And also, I would prefer you defer it than not give me
5 the capped language that we were looking for, which you've just
6 indicated that it would not be your inclination, if you were
7 decide this issue, to give us that. And so --

8 THE COURT: Because the issue for -- let me just say.
9 I don't real -- I'll let you finish. Go ahead and finish your
10 thought, and then I'll say my thought.

11 MR. MARRIOTT: So that's -- that's fine and -- I mean,
12 on that basis.

13 THE COURT: Look, Mr. Marriott, if the case were tried
14 before me and I had to -- and if it was left to me at the
15 conclusion of a trial that resulted in a verdict -- an adverse
16 verdict for defendant, if I had to decide what the appropriate
17 measure for judgment reduction should be, I'd go ahead and do
18 that. I'm not sure which way I'd come out on it, okay? That's
19 quite honest. I don't know which way I'd come out on it.

20 But what I had before me until they took the language
21 out was -- first, I was dissatisfied the way they dealt with
22 it, leaving it to appropriate law, whatever that was, okay?
23 Then, they come out with a rule that was clearly adverse to
24 you. And the Second Circuit law on it, which is what I think
25 I'd have to apply, recognizes, well, you know, there are two

1 different rules, and it doesn't clearly come on one side or the
2 other.

3 So then, I say to myself, okay, I'm faced with a 9019.
4 The parties negotiated an agreement that includes judgment
5 reduction according to this formula. The decision for me is do
6 I -- in the face of your objection, do I -- does that satisfy
7 the 9019 standard and Rule 23. I can't say definitively it
8 doesn't. I think I could find myself concluding that that's
9 fair, reasonable, in the best interest of the estate despite
10 PNC's objection and say what I said last time, I think this
11 really ought to be for the judge in Pennsylvania. Okay.

12 So now they come back; they've taken the language out.
13 I'll hear them. They may not like what I'm say now either.
14 Okay. But they can't have it both ways either, all right?
15 They had no -- they didn't have -- they had the appropriate
16 applicable law language, then they put something in that you
17 didn't like, they liked. We're back at the final approval
18 stage. They've taken the language out, and I'm going to fill
19 that void of the absence of language and say the district court
20 and what's -- is it the Western District of Pennsylvania?

21 MR. MARRIOTT: Western District of Pennsylvania.

22 THE COURT: Western District of Pennsylvania should
23 decide -- in the event it becomes necessary, should decide what
24 the appropriate rule for judgment reduction should be in the
25 circumstances. But, you know, if you want to talk yourself out

1 of that position, keep going.

2 MR. MARRIOTT: Judge, I know when to sit down.

3 MR. WALSH: Good afternoon, Your Honor. John Walsh,
4 Curtis Mallett-Prevost, for the debtors. We are willing to
5 accept Your Honor's proposal. I think that makes a lot of
6 sense to defer this to the MDL judge so, obviously, let the
7 Kessler plaintiffs address. But to the extent we can work out
8 the language, we'll work the language and include it --

9 THE COURT: Okay.

10 MR. WALSH: -- in the final order.

11 THE COURT: Thank you very much.

12 All right. Let me hear from lead plaintiffs' counsel.

13 MR. WALTERS: Your Honor, yes. With respect to that
14 issue --

15 THE COURT: You have to identify yourself on the
16 record.

17 MR. WALTERS: Fred Walters. I always forget, and I
18 apologize.

19 THE COURT: That's okay.

20 MR. WALTERS: Fred Walters for the Kessler class
21 plaintiffs. Your Honor, we are -- actually, in our proposed
22 order, which has some revisions that we were going to submit to
23 you, it's very close to what you suggest that you want included
24 already. We have no objection to your suggestion that it be
25 deferred or referred, whatever the right --

1 THE COURT: Remind me of the district judge's name.

2 Remind me of the district judge's name.

3 MR. WALTERS: Judge Schwab.

4 THE COURT: Judge Schwab.

5 MR. ROSENBAUM: Yeah.

6 THE COURT: He was -- we had a very -- we didn't get
7 into the merits. We had a very good conversation about the
8 case. He appreciated the fact that I didn't just go ahead and
9 enter an order that could affect his case. And so -- go ahead.
10 I didn't want to --

11 MR. WALTERS: Yeah, I don't -- I'm sure that he did,
12 and he's -- I'm -- it's good that you spoke with him and --

13 THE COURT: It sounds like this case has been petty --
14 he didn't have the case originally. He inherited the case
15 and --

16 MR. WALTERS: This case has been pending for twelve
17 years, and our previous judge passed during that -- it's been
18 pending that long. Judge, my kids have been educated and
19 out --

20 THE COURT: So --

21 MR. WALTERS: -- out of college through this.

22 THE COURT: -- when I became a judge in November 2006,
23 I had been litigating a case in federal court in Atlanta for
24 twelve years. In twelve years, I don't even think a deposition
25 had been taken yet. We'd been through multiple rounds of

1 motions, and it lasted, I think, for another four years after I
2 came on the bench. I think everybody just got burned out and
3 settled it. I mean, but it just -- it was a long time.

4 MR. WALTERS: A lot of perseverance required, Your
5 Honor, when you represent --

6 THE COURT: All right. What I would like you to do --

7 MR. WALTERS: -- to commit to --

8 THE COURT: -- I'd like you to sit down with PNC's
9 counsel and the other counsel in the case and see
10 whether -- you've heard what I want to say --

11 MR. WALTERS: We have.

12 THE COURT: -- okay? I didn't wordsmith it. You've
13 heard the gist of what I wanted.

14 MR. WALTERS: I think we can do that, Your Honor.

15 THE COURT: But maybe what you could do is -- let's
16 take a short recess, see if you can agree on the language to go
17 in the order. Assuming this issue is worked out so that -- I
18 have carefully considered the motion for approval on a final
19 basis of the class action settlement in the Kessler case.
20 Subject to satisfactory language with respect to judgment
21 reduction, the Court overrules the one other objection and
22 finds that this -- the proposed settlement satisfies both Rule
23 7023 and the rule -- Bankruptcy Rule 9019 standard.

24 The settlement -- the proposed settlement is fair,
25 equitable, and in the best interests of the debtors' estate.

1 So I'm completely satisfied with it. Why don't you take a
2 little while, see if you can agree on that additional language
3 to put it. And why doesn't somebody knock on my chambers door
4 when you do. You ought to be able to work this out to get the
5 right --

6 MR. WALTERS: It'll be very quick, Your Honor.

7 THE COURT: -- satisfactory.

8 MR. WALTERS: By the -- just for the Court's record,
9 there -- we have two other motions, not only that motion but
10 the fee motion and the incentive fee motion that we think --
11 that we need to address also.

12 THE COURT: Yeah. Anybody else want to address the
13 fee motion? And I know that was one of the objections related
14 to the fee motion.

15 MR. WALTERS: Yeah.

16 THE COURT: Anybody else wish to object -- address it?

17 Okay. In my comments for approving the settlement,
18 I'm also approving the class action, the fees, and the
19 incentive for payment as well.

20 MR. WALTERS: One last motion would be the incentive
21 motion for the class representative.

22 THE COURT: Yes, I understand. You said a motion for
23 the --

24 MR. WALTERS: Oh.

25 THE COURT: -- class representative and fees for

1 class counsel.

2 MR. WALTERS: Okay. Your Honor, that -- we're --

3 THE COURT: Okay?

4 MR. WALTERS: We will convene with the PNC --

5 THE COURT: Okay.

6 MR. WALTERS: -- counsel.

7 THE COURT: All right. So somebody just knock on my
8 chambers door when you have that worked out, and I'll come back
9 out. Okay?

10 MR. WALTERS: Thank you, Your Honor.

11 THE COURT: All right. Thank you.

12 (Recess from 4:26 p.m. until 4:38 p.m.)

13 THE COURT: Mr. Marriott?

14 MR. MARRIOTT: I'm going to, Judge, read to you what
15 will be paragraph 15 to the last paragraph of the proposed
16 order that we transmitted to you with these changes.

17 THE COURT: Okay. Just pull the microphone a little
18 closer to you.

19 MR. MARRIOTT: I'm sorry.

20 THE COURT: Okay.

21 MR. MARRIOTT: The paragraph is captioned "Judgment
22 Reduction" and will read as follows.

23 "Nothing contained in this order shall be construed as
24 determining the method or amount of any judgment reduction, if
25 applicable, with respect to any nonsettling defendants in the

1 MDL litigation. This Court specifically refers determination
2 of such issues to the United States District Court for the
3 Western District of Pennsylvania or to such other courts in
4 which the actions consolidated in the MDL litigation may be
5 pending at the time of such determination."

6 THE COURT: All right. Is everybody in agreement on
7 that language?

8 MR. WALSH: Plaintiffs agree, Your Honor.

9 MR. MARRIOTT: The debtors' are in agreement, Your
10 Honor.

11 THE COURT: All right. That's satisfactory to me as
12 well. So --

13 MR. WALTERS: Judge, we had a proposed order which has
14 never been submitted, but it doesn't -- Fred Walters for the
15 plaintiff. We had a revised final order --

16 THE COURT: So somebody needs to e-mail the order to
17 chambers. And as long as you've all signed off on it, I will
18 go ahead and enter the order. Mr. Rosenbaum?

19 MR. ROSENBAUM: That'll be fine.

20 MR. MARRIOTT: We'll take care of that, Your Honor.

21 THE COURT: Okay. So is it -- is everything in a
22 single order? Because you've got the fee issue and the
23 incentive fee for class representatives. Everything's in the
24 single order?

25 MR. WALTERS: All in the same order.

1 THE COURT: Okay. All right. If --

2 MR. ROSENBAUM: Your Honor, well -- I'm sorry.

3 THE COURT: Go ahead, Mr. Rosenbaum.

4 MR. ROSENBAUM: Just one housekeeping matter. Norm
5 Rosenbaum for the debtors. We just want to move all the
6 declarations into evidence, Your Honor.

7 THE COURT: Okay.

8 MR. ROSENBAUM: Thank you.

9 THE COURT: Could you identify them by ECF number?

10 MR. ROSENBAUM: In a second, Your Honor.

11 THE COURT: Sure. And if you -- my courtroom deputy's
12 already left for the day. She will be here tomorrow morning,
13 and I will be here tomorrow morning, but only in the morning so
14 that if you get the order e-mailed to chambers in the morning,
15 it'll get entered tomorrow morning.

16 MR. WALTERS: Your Honor, I have those declarations
17 that Mr. Rosenbaum was talk --

18 THE COURT: Okay.

19 MR. WALTERS: -- was mentioning. They would be at doc
20 number 4451-1 --

21 THE COURT: That's the --

22 MR. WALTERS: -- through doc number 4 --

23 THE COURT: Identify the declarant and -- with each
24 one, okay?

25 MR. WALTERS: Doc number 4451-1 is Mr. Thompson's

1 declaration. Doc number 4451-2 is Mr. Walters', or my,
2 declaration. Doc number 4451-3 is the declaration jointly of
3 Mr. Walters, Mr. Skeens, and Mr. Carlson. Doc number 4451-4 is
4 Mr. Friedman's declaration.

5 With respect to the fee motion, the various
6 declarations are contained at doc number 5598-1, which is my
7 declaration.

8 (Pause)

9 MR. WALTERS: Doc number 5598-1 is the Walters -- Fred
10 Walters declaration. Doc number 5598-2 is Mr. Carlson's
11 declaration. Doc number 5598-3 is Mr. Borison's declaration.
12 Doc number 5598-4 is Mr. Sharbrough's declaration. Doc number
13 5598-5 is Mr. Hutton's declaration. Doc number 5598-6 is Mr.
14 Flanigan's declaration. Doc number 5598-7 is Mr. Wood's
15 declaration, and doc number 5598 is Mr. Dan Myers' declaration.
16 And I believe those are all of the declarations.

17 THE COURT: All right. Are there any objections to
18 the Court admitting in evidence the declarations that have been
19 just identified on the record?

20 All right. All of them are in evidence.
21 (Declarations were hereby received into evidence as Debtors'
22 Exhibits, as of this date.)

23 MR. WALTERS: Thank you, Your Honor.

24 THE COURT: Mr. Marriott, is there anything else?

25 MR. MARRIOTT: Just one housekeeping --

1 THE COURT: Sure.

2 MR. MARRIOTT: -- item, Your Honor. We had filed a
3 request for judicial notice in connection with our objection.
4 And I think given the resolution, that's become moot.

5 THE COURT: Okay. Thank you very much.

6 Mr. Rosenbaum, was there something else you wanted to
7 say?

8 MR. ROSENBAUM: I'm looking around. But no, Your
9 Honor, I think that concludes the --

10 THE COURT: Okay.

11 MR. ROSENBAUM: -- proceedings for today. Thank you.

12 THE COURT: I'm pleased that you were all able to
13 settle this action. And has anything happened in the district
14 court since -- since you were last here?

15 MR. WALTERS: Yes, Your Honor. We've -- the class has
16 been certified, and we've been engaging in energetic discovery,
17 if you will. And the Third Circuit Court of Appeals has now
18 accepted a third time -- a third appeal, a 23(f) appeal of the
19 class certification order. So if I had kids, there would
20 probably be another twelve years, Your Honor. So we're on a
21 long course. That's what the status is right now.

22 THE COURT: All right. Thank you very much.

23 MR. WALTERS: You're welcome.

24 THE COURT: All right. Everybody have a very nice
25 Thanksgiving.

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1 IN UNISON: Thank you, Your Honor.

2 THE COURT: Okay.

3 (Whereupon these proceedings were concluded at 4:44 PM)

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I N D E X

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

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Date: November 27, 2013